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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/615,383

07/09/2003

Timothy J. Foster

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EXAMINER

ARCHIE, NINA

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/615,383	<b>Applicant(s)</b> FOSTER ET AL.	
	<b>Examiner</b> Nina A. Archie	<b>Art Unit</b> 1645	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 8/25/2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-10 and 13-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-5, 7, 9, 13, 16-19 is/are allowed.
- 6) ☒ Claim(s) 6, 8, 10, 14 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***DETAILED ACTION***

1. This Office is responsive to Applicant's amendment and response filed 8-25-08. Claims 2-10, and 13-19 are pending. Claims 6-7 have been amended. Claims 18-19 are new. Claims 1 and 11-12 have been cancelled.

***Rejections Withdrawn***

2. In view of the Applicant's amendment and remark following objections are withdrawn.
- a) Rejection to claims 2-5, 7-10, and 11-17 under 35 U.S.C. 102(b) is withdrawn in light of applicant's amendment thereto.
  - b) Rejection to claims 2-10 and 13-17 under 35 U.S.C. 102(e) is withdrawn in light of applicant's amendment thereto.

***New Grounds of Objections/Rejections***  
***Claim Objections***

3. Claim 6 is objected to because of the following informalities: The claims states "wherein" twice. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

4. Claims 6, 8, 10 and 14-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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As to claim 6, the claim is confusing because the claim recites indefinite article "The" attempting to limit the isolated antibody as dependent claim. Amendment of the claim to change "The" to "An" would obviate this issue.

As to claims 8, 10, and 14-15, the claims do not recite an article such as "the." The claims therefore encompass any isolated antibody/antisera, but then attempt to limit the isolated antibody/antisera. Amendment of the claims to add the word "The" would obviate this issue.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the

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requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claim 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Guss et al WO1997/48727.

The claim is drawn to an isolated antibody that binds to an SdrG fibrinogen-binding protein from coagulase-negative Staphylococcus epidermidis wherein the SdrG fibrinogen-binding protein comprises SEQ ID NO:10 (claim 6).

Guss et al teach a protein from S. epidermidis wherein the protein contains a consensus sequence TYTFTDYVD wherein the consensus sequence is encoded in a protein, wherein the protein is an SdrG fibrinogen-binding protein comprising SEQ ID NO: 10 (Example 3 Figure 6 STIC Results). Although Guss et al does not teach 100% homology to SEQ ID NO: 10, Guss et al inherently teach antibody that binds to an SdrG fibrinogen-binding protein from coagulase-negative Staphylococcus epidermidis. Guss et al teach antibodies against the SdrG fibrinogen-binding protein (see pg. 4 last paragraph, Example 1, Example 5). Therefore Guss et al anticipate an isolated antibody that binds to an SdrG fibrinogen-binding protein from coagulase-negative Staphylococcus epidermidis wherein the SdrG fibrinogen-binding protein comprises SEQ ID NO: 10.

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6. Claim 6 is rejected under 35 U.S.C. 102(e) as being anticipated by US Patent No. 6,380,370 Doucette-Stamm et al Date April 30, 2002 (US Filing Date August 13, 1998).

The claim is drawn to an isolated antibody that binds to an SdrG fibrinogen-binding protein from coagulase-negative Staphylococcus epidermidis wherein the SdrG fibrinogen-binding protein comprises SEQ ID NO:10 (claim 6).

Doucette-Stamm et al teach an isolated polypeptide and nucleic acid sequences derived from Staphylococcus epidermidis (see SEQ ID NO. 5314) that has 100% homology to SEQ ID NO. 10 comprising a consensus sequence TYTFTDYVD, thus Doucette-Stamm et al teach antibodies raised against the polypeptide of SEQ ID NO: 10 (see abstract, column 3 lines 15-27, column 9 lines 7-27, Example 3 Figure 6 STIC Results). Thus Doucette-Stamm et al inherently teach antibodies reactive with S. epidermidis polypeptides. Therefore Doucette-Stamm et al anticipate an isolated antibody that binds to an SdrG fibrinogen-binding protein from coagulase-negative Staphylococcus epidermidis (see abstract, column 3 lines 15-27, column 9 lines 7-27, Example 3 Figure 6 STIC Results, column 40 lines 29-64).

#### ***Status of the Claims***

7. No claims are allowed.  
Claims 6, 8, 10 and 14-15 are rejected.  
Claims 2-5, 7, 9, 13, 16-19 are allowed.  
Claims 1 and 11-12 are cancelled.

#### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

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MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nina A. Archie whose telephone number is 571-272-9938. The examiner can normally be reached on Monday-Friday 8:30-5:00p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner supervisor, Robert Mondesi can be reached on 571-272-0956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert B Mondesi/  
Supervisory Patent Examiner, Art  
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Nina A Archie  
Examiner  
GAU 1645  
REM 3B31

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